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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,677	02/28/2004	Larry L. Hoover	17234	7569

25542 7590 11/10/2005

CNH AMERICA LLC  
INTELLECTUAL PROPERTY LAW DEPARTMENT  
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EXAMINER
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NGUYEN, JIMMY T

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/789,677	Applicant(s) HOOVER ET AL.	
	Examiner Jimmy T. Nguyen	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 26 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

*Response to Amendment*

The amendment filed on August 26, 2005 has been entered and considered and an action on the merits follows.

*Drawings*

The amendment sufficiently overcomes the drawing objections noted in the previous office action. The drawing objections noted in the last Office action have been withdrawn.

*Specification*

The proposed amendment sufficiently overcomes the disclosure informalities noted in the previous office action. The objection to the title noted in the last Office action has been withdrawn. However, after further consideration, the amendment is further objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

Regarding the last line of claims 1, 7, 11, and 15, the limitation “that kick being the primary impetus for bale ejection (emphasis added)” is new matter. The specification discloses that the bale kicker provides impetus to bale being ejected (paragraph 5). Nowhere in the specification discloses that the kick being the primary impetus for bale ejection.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding the last line of claims 1, 7, 11, and 15, the limitation “that kick being the primary impetus for bale ejection (emphasis added)” is new matter. See similar discussion in the objections to the specification above.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 and 11, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Van Ryswyk (US 4,683,815).** The claims are rejected for substantially the same reasons as set forth in the last Office action.

Regarding claims 1 and 11, Van Ryswyk discloses a round baler having a frame (fig. 2), a wheel assembly (17) including a transverse axle (48), a clam shell-like (see figs. 6-10) bale forming chamber (21) including a forward portion (see the left side of the baler (15) in fig. 7) and a tailgate portion (27) vertically pivotable between a close position (fig. 6) and an open position (fig. 8), and a bale kicker (fig. 3) vertically pivotably connected to the axle (via element (47)), wherein the bale kicker comprising: a generally flat table-like ramp (28, 29, 31, 32) affixed to the axle (via element (47)) for generally free vertical pivoting movement (at element (42)) between a slightly above horizontal position (fig. 6) and a position in contact with the ground (fig. 7); a transverse torsion bar (a combination of elements (43, 47, 51, 53 ) formed the torsion bar) with a longitudinal axis generally parallel to the transverse axle (fig. 2), the torsion bar having a first end affixed to the axle (via element (47)) and an opposing second end affixed to the ramp (via element (33)) (see fig. 3).

Van Ryswyk discloses that that the tilting of ramp toward the ground is the result of the weight the a bale (56) counteracting the pressure of the torsion spring (51) on the torsion bar, and the ramp returns to the normal/upward position by the pressure of the spring when the bale discharges from the ramp (col. 4, lines 20-29), this upward movement of the ramp inherently provides a kick to the cylindrical side of the bale to support the ejection of the bale as the bale rolls off the ramp, and thus Van Ryswyk inherently discloses kick for bale ejection.

Please note that claims 2-10 and 12-18 appear to contain allowable subject matter. However, in view of the issues under 35 USC 112 rejections and the objections to the specification as set forth above, the allowability of the claims can not be determined at this time.

***Allowable Subject Matter***

The following is a statement of reasons for the indication of allowable subject matter:

Claim 2 is allowable because the art of record, considered alone or in combination, neither anticipates nor renders obvious a round baler comprising *a support arm is rigidly affixed to the axle*, in combination with the rest of the claimed limitations.

Claims 7 and 15 are allowable because the art of record, considered alone or in combination, neither anticipates nor renders obvious a round baler comprising a bale kicker including: *first and second generally transverse torsion bars with aligned longitudinal axes generally parallel to the transverse axle*, in combination with the rest of their respective claimed limitations.

Claim 12 is allowable because the art of record, considered alone or in combination, neither anticipates nor renders obvious a round baler comprising *a torsion bar has a multifaceted portion on each of the first and second end, and an axle bracket is rigidly affixed to the axle and extends generally rearwardly away therefrom*, in combination with the rest of the claimed limitations.

***Response to Arguments***

Applicant's arguments filed August 26, 2005 have been fully considered but they are not persuasive.

Applicant argues that Ryswyk does not disclose the ramp is "flat table-like", this argument is not found persuasive because the term "flat table-like" does not clearly define in the claim. The ramp of Ryswyk does not distinguish over the ramp as claimed in claims 1 and 11,

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both of these ramps support a bale and both ramps affixed to the axle for generally free vertical pivoting movement between a slightly above horizontal position and a position in contact with the ground, and thus Ryswyk does disclose the ramp is "flat table-like".

Applicant further argues that Ryswyk does not disclose a kicker. With respect to Applicant's assertions, this argument is not found persuasive because Ryswyk does disclose a kicker as discussed in the 35 U.S.C. 102 rejections above.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy T. Nguyen whose telephone number is (571) 272-4520. The examiner can normally be reached on Mon-Thur 8:00am - 6:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272- 4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTNguyen  
November 03, 2005



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